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EXAMINER	
BELANI, KISHIN G	

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/728,016	GRIMM ET AL.	
	Examiner	Art Unit	
	Kishin G. Belani	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 October 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 October 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is in response to Applicant's **RCE filed on 10-22-2007**. All **independent claims 1, 16, 31 and 33-35** have been amended. None of the dependent claims has been amended. No claim has been cancelled. The applicants' current (10/22/2007) amendments to claims are shown in ***bold and italics***, and the examiner's response to the amendments is shown in **bold** in this office action. **Claims 1-35** are now pending in the present application.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2007 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness
or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6-9, 11, 12, 16-21, 23-25, 27, 28, and 31-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Romero et al. (U.S. Patent Application Publication # 2004/0199632 A1)** in view of **Steele et al. (U.S. Patent Application Publication # 2004/0117476 A1)**.

Consider **claim 1**, Romero et al. show and disclose a method for managing usage of a plurality of standby resources included within a plurality of computers, wherein each computer of the plurality of computers includes at least one standby resource of the plurality of resources (Abstract; Fig. 1; paragraph 0012, that describe a method for automatically balancing processors across partitions of a partitioned server using reserve (standby) processors; paragraph 0025, lines 1-4 that describe a "partition" of a partitioned server as an individual computer), the method comprising:
limiting availability to a first standby resource included within a source computer of the plurality of computers; and programmatically transferring the availability to a second standby resource included within a destination computer of the plurality of computers, (paragraph 0037, lines 9-13, that describe how the standby capacity is managed by reducing the capacity of a partition by removing one or more active processors in order to increase the associated reserve processor pool and make a processor available for activation in another partition).

However, Romero et al. do not specifically disclose that ***the source and destination computers are geographically dispersed from one another.***

In the same field of endeavor, Steele et al. disclose in their claimed method that ***the source and destination computers are geographically dispersed from one another*** **(Fig. 3 that shows two distinct and geographically separated UDC (Utility Data Center) Control Planes 311 and 321, controlling the resource allocation for groups of networks VLAN-1:3 and VLAN A:C, each with its own spare resource pool 319 and 329 respectively; paragraph 0010, lines 8-12; paragraph 0023, lines**

8-10; paragraph 0024, lines 2-4; paragraph 0025, Fig. 1, lines 8-9; and paragraphs 0027, 0032-0037 provide additional details; paragraph 0032 specifically disclosing that if a resource dedicated to VLAN-1 (313) fails, the control plane 311 will automatically configure a spare from the set of spares 319 to replace the faulty resource, further disclosing (in paragraph 0032) that if none of the spares 319 are viable substitutions, one of the spares 329 can be used for control plane 311 rather than control plane 321; additionally disclosing (in paragraph 0034) a monitoring component being used to measure not only performance and integrity, but throughput as well, so that resource allocation may also be based on assisting in rebalancing loads throughout the data canter).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the case wherein the source and destination computers are geographically dispersed from one another, as taught by Steele et al. in the method of Romero et al. in order to provide more versatile load balancing service wherein the computer resources are geographically dispersed.

Consider **claim 2**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that transferring the availability further includes verifying the limiting availability (in Romero et al. reference, paragraph 0047, lines 12-18, that disclose an auditing system that verifies the limit of the total number of active processors).

Consider **claim 3**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that transferring the availability further includes maintaining a physical distribution of the first and second standby resources as between the source and destination computers (in Romero et al. reference, paragraph 0042, lines 4-8, which disclose that selection of either active or reserve processor does not cross any of the boundaries of the partitioned server, but are self-contained within respective partitions).

Consider **claim 4**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that transferring the availability further includes maintaining respective workloads as between the source and destination computers (in Romero et al. reference, paragraph 0031, lines 0013-0022, which disclose that a workload manager meets the "Service Level Objective" of maintaining workload balance on each partition by activating and deactivating either active or reserve processors).

Consider **claim 6**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that limiting the availability further includes generating a request to downgrade the availability (in Romero et al. reference, paragraph 0044, lines 0015-0018, which disclose that upon a request from Workload Manager to limit the availability, a partition downgrades one or more of active processors).

Consider **claim 7**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose using an entitlement application computer to manage the usage (in Romero et al. reference, Fig. 1, block 14 Workload Manager (not marked but described in paragraph 0028); paragraph 0028, lines 0001-0004, that disclose a Workload Manager interpreted to be an entitlement computer to manage the resources).

Consider **claim 8**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that limiting the availability further includes generating a request to upgrade the availability (in Romero et al. reference, paragraph 0039, lines 0042-0052; paragraph 0044, lines 0018-0021, which disclose that a Workload Manager may request to increase entitlement for a partition that needs more resources).

Consider **claim 9**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that limiting the availability further includes generating a signature indicative of the availability (in Romero et al. reference, paragraph 0039, lines 0056-0061, which disclose that Workload Manager forms an allocation value interpreted to be a signature indicative of the availability such that the system resources are apportioned based on the allocation values).

Consider **claim 11**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that limiting the availability further includes determining the first standby resource (in Romero et al. reference, paragraph 0013, lines 0007-0011,

which disclose identifying a second partition having at least one active processor which is not allocated at the objective level, and deactivating it, interpreted to be the first standby resource within the source computer).

Consider **claim 12**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., also disclose that transferring the availability further includes determining the second standby resource (in Romero et al. reference, paragraph 0013, lines 0001-0007, which disclose identifying a first partition having at least one reserve processor available for activation to meet service level objectives, interpreted to be the second standby resource within the destination computer).

Consider **claim 16**, Romero et al. disclose an apparatus comprising:
a source computer including a first standby resource; a destination computer including a second standby resource (Abstract, that describes a system for automatically allocating computing resources in a partitioned server (each partition of which is defined in paragraph 0025, lines 0001-0004 as equivalent to a computer) by activating a reserve processor in one partition and deactivating an active processor in another partition; Fig. 1, block 10 that shows a partitioned server, and block 14 that represents a Workload Manager that includes program code (not marked but described in paragraph 0028)); and program code in communication with at least one of the source and destination computers, the program code configured to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby

resource (paragraph 0012, lines 0010-0014, that disclose a machine readable medium to perform the functions to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby resource).

However, Romero et al. do not specifically disclose that ***the source and destination computers are geographically dispersed from one another.***

In the same field of endeavor, Steele et al. disclose in their claimed system that ***the source and destination computers are geographically dispersed from one another*** **(Fig. 3 that shows two distinct and geographically separated UDC (Utility Data Center) Control Planes 311 and 321, controlling the resource allocation for groups of networks VLAN-1:3 and VLAN A:C, each with its own spare resource pool 319 and 329 respectively; paragraph 0010, lines 8-12; paragraph 0023, lines 8-10; paragraph 0024, lines 2-4; paragraph 0025, Fig. 1, lines 8-9; and paragraphs 0027, 0032-0037 provide additional details; paragraph 0032 specifically disclosing that if a resource dedicated to VLAN-1 (313) fails, the control plane 311 will automatically configure a spare from the set of spares 319 to replace the faulty resource, further disclosing (in paragraph 0032) that if none of the spares 319 are viable substitutions, one of the spares 329 can be used for control plane 311 rather than control plane 321; additionally disclosing (in paragraph 0034) a monitoring component being used to measure not only performance and integrity, but throughput as well, so that resource allocation may also be based on assisting in rebalancing loads throughout the data canter).**

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the case wherein the source and destination computers are geographically dispersed from one another, as taught by Steele et al. in the system of Romero et al. in order to provide more versatile load balancing service wherein the computer resources are geographically dispersed.

Consider **claim 17**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose a memory including a record relating to respective availabilities of the first and second standby resources (in Romero et al. reference, paragraph 0034, lines 0048-0052, which describe that the Workload Manager 14 receives and has stored information on the number of reserve processors available for allocation to an Active Processor Pool).

Consider **claim 18**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose an entitlement computer for managing the availability (in Romero et al. reference, paragraph 0028, lines 0001-0004, that describe a Workload Manager, interpreted to be an entitlement computer for managing the availability).

Consider **claim 19**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that the program code initiates verifying the availability (in Romero et al. reference, paragraph 0034, lines 0001-0007, that describe

an allocator that based on the instructions received from the Workload Manager 14, reallocates resources based on availability).

Consider **claim 20**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that the physical distribution of the first and second standby resources remains the same as between the source and destination computers (in Romero et al. reference, paragraph 0011, lines 0009-0011, which disclose that automatic allocation of processor reserves is operable even though cells are not able to be migrated dynamically).

Consider **claim 21**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that respective workloads as between the source and destination computers is unaffected by the programmatic transfer (in Romero et al. reference, paragraph 0031, lines 0013-0022, which disclose that a workload manager meets the "Service Level Objective" of maintaining workload balance on each partition by activating and deactivating either active or reserve processors)

Consider **claim 23**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that the program code initiates generating a request to downgrade the availability (in Romero et al. reference, paragraph 0044, lines 0015-0018, which disclose that upon a request from Workload Manager to limit the availability, a partition downgrades one or more of active processors).

Consider **claim 24**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that the program code initiates generating a request to upgrade the availability (in Romero et al. reference, paragraph 0039, lines 0042-0052; paragraph 0044, lines 0018-0021, which disclose that a Workload Manager may request to increase entitlement for a partition that needs more resources).

Consider **claim 25**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that the program code initiates generating a signature indicative of the availability (in Romero et al. reference, paragraph 0039, lines 0056-0061, which disclose that Workload Manager forms an allocation value interpreted to be a signature indicative of the availability such that the system resources are apportioned based on the allocation values).

Consider **claim 27**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that the program code initiates determining the first standby resource (in Romero et al. reference, paragraph 0013, lines 0007-0011, which disclose identifying a second partition having at least one active processor which is not allocated at the objective level, and deactivating it, interpreted to be the first standby resource within the source computer).

Consider **claim 28**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., also disclose that the program code initiates determining the second standby resource (in Romero et al. reference, paragraph 0013, lines 0001-0007, which disclose identifying a first partition having at least one reserve processor available for activation to meet service level objectives, interpreted to be the second standby resource within the destination computer).

Consider **claim 31**, Romero et al. clearly show and disclose an apparatus comprising:

a processor in communication with both a source computer including a first standby resource and a destination computer including a second standby resource (Abstract; Fig. 1, showing a workload manager 14 (not marked in the figure but mentioned in paragraph 0028) communicating with various partitions (interpreted as source and destination computers with one or more active and reserve resources) in the partitioned server 10. The workload manager along with the program code resident in it is interpreted as a processor; paragraph 0025, lines 1-4 that describe a "partition" of a partitioned server as an individual computer);

and program code executable by the processor and configured to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby resource (paragraph 0037, lines 9-13, that describe how the standby capacity is managed by reducing the capacity of a partition by removing one or

more active processors in order to increase the associated reserve processor pool and make a processor available for activation in another partition).

However, Romero et al. do not specifically disclose that ***the source and destination computers are geographically dispersed from one another.***

In the same field of endeavor, Steele et al. disclose in their claimed system that ***the source and destination computers are geographically dispersed from one another*** **(Fig. 3 that shows two distinct and geographically separated UDC (Utility Data Center) Control Planes 311 and 321, controlling the resource allocation for groups of networks VLAN-1:3 and VLAN A:C, each with its own spare resource pool 319 and 329 respectively; paragraph 0010, lines 8-12; paragraph 0023, lines 8-10; paragraph 0024, lines 2-4; paragraph 0025, Fig. 1, lines 8-9; and paragraphs 0027, 0032-0037 provide additional details; paragraph 0032 specifically disclosing that if a resource dedicated to VLAN-1 (313) fails, the control plane 311 will automatically configure a spare from the set of spares 319 to replace the faulty resource, further disclosing (in paragraph 0032) that if none of the spares 319 are viable substitutions, one of the spares 329 can be used for control plane 311 rather than control plane 321; additionally disclosing (in paragraph 0034) a monitoring component being used to measure not only performance and integrity, but throughput as well, so that resource allocation may also be based on assisting in rebalancing loads throughout the data canter).**

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the case wherein the source and destination

computers are geographically dispersed from one another, as taught by Steele et al. in the system of Romero et al. in order to provide more versatile load balancing service wherein the computer resources are geographically dispersed.

Consider **claim 32**, and **as applied to claim 31 above**, Romero et al., as modified by Steele et al., also disclose that the program code is further configured to initiate generating a fee associated with the programmatic transfer (in Romero et al. reference, paragraph 0047, lines 0012-0018, which disclose an auditing system that calculates the total number of processors and if the number of active processors exceed a limit, a charge is incurred).

Consider **claim 33**, Romero et al. clearly show and disclose an apparatus comprising:

a processor; a source computer including a first standby resource in communication with the processor; and program code executable by the processor, the program code configured to initiate limiting availability to the first standby resource, wherein the availability is transferred to a second standby resource of a destination computer (Abstract; Fig. 1; paragraph 0025, lines 1-8 that describe a "partition" of a partitioned server as an individual computer. It further discloses that a partition may contain one or more processors (CPUs), which are considered standby resources. A specific case of a single CPU in a partition for a source computer and a second partition of multiple CPUs for a destination computer along with a Workload Manager

(interpreted to be a processor with the program code) corresponds to the apparatus cited in the claim).

However, Romero et al. do not specifically disclose that ***the source and destination computers are geographically dispersed from one another.***

In the same field of endeavor, Steele et al. disclose in their claimed system that ***the source and destination computers are geographically dispersed from one another*** **(Fig. 3 that shows two distinct and geographically separated UDC (Utility Data Center) Control Planes 311 and 321, controlling the resource allocation for groups of networks VLAN-1:3 and VLAN A:C, each with its own spare resource pool 319 and 329 respectively; paragraph 0010, lines 8-12; paragraph 0023, lines 8-10; paragraph 0024, lines 2-4; paragraph 0025, Fig. 1, lines 8-9; and paragraphs 0027, 0032-0037 provide additional details; paragraph 0032 specifically disclosing that if a resource dedicated to VLAN-1 (313) fails, the control plane 311 will automatically configure a spare from the set of spares 319 to replace the faulty resource, further disclosing (in paragraph 0032) that if none of the spares 319 are viable substitutions, one of the spares 329 can be used for control plane 311 rather than control plane 321; additionally disclosing (in paragraph 0034) a monitoring component being used to measure not only performance and integrity, but throughput as well, so that resource allocation may also be based on assisting in rebalancing loads throughout the data canter).**

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the case wherein the source and destination

computers are geographically dispersed from one another, as taught by Steele et al. in the system of Romero et al. in order to provide more versatile load balancing service wherein the computer resources are geographically dispersed.

Consider **claim 34**, Romero et al. clearly show and disclose an apparatus comprising:

a processor; a destination computer including a first standby resource in communication with the processor; and program code executable by the processor, the program code configured to initiate increasing availability to the first standby resource, wherein the availability is transferred from a second standby resource of a source computer (Abstract; Fig. 1; paragraph 0025, lines 1-8 that describe a "partition" of a partitioned server as an individual computer. It further discloses that a partition may contain one or more processors (CPUs), which are considered standby resources. A specific case of a single CPU in a partition for a destination computer and a second partition of multiple CPUs for a source computer along with a Workload Manager (interpreted to be a processor with the program code) corresponds to the apparatus cited in the claim).

However, Romero et al. do not specifically disclose that ***the source and destination computers are geographically dispersed from one another.***

In the same field of endeavor, Steele et al. disclose in their claimed system that ***the source and destination computers are geographically dispersed from one another*** **(Fig. 3 that shows two distinct and geographically separated UDC (Utility Data Center) Control Planes 311 and 321, controlling the resource allocation for**

groups of networks VLAN-1:3 and VLAN A:C, each with its own spare resource pool 319 and 329 respectively; paragraph 0010, lines 8-12; paragraph 0023, lines 8-10; paragraph 0024, lines 2-4; paragraph 0025, Fig. 1, lines 8-9; and paragraphs 0027, 0032-0037 provide additional details; paragraph 0032 specifically disclosing that if a resource dedicated to VLAN-1 (313) fails, the control plane 311 will automatically configure a spare from the set of spares 319 to replace the faulty resource, further disclosing (in paragraph 0032) that if none of the spares 319 are viable substitutions, one of the spares 329 can be used for control plane 311 rather than control plane 321; additionally disclosing (in paragraph 0034) a monitoring component being used to measure not only performance and integrity, but throughput as well, so that resource allocation may also be based on assisting in rebalancing loads throughout the data canter).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the case wherein the source and destination computers are geographically dispersed from one another, as taught by Steele et al. in the system of Romero et al. in order to provide more versatile load balancing service wherein the computer resources are geographically dispersed.

Consider **claim 35**, Romero et al. clearly show and disclose a program product comprising:

program code in communication with/at least one of the source and destination computers having access to first and second standby resources, respectively, the

program code configured to initiate limiting availability to the first standby resource and to programmatically transfer the availability to the second standby resource (Abstract; Claim 9; Fig. 1, showing a workload manager 14 communicating with various partitions (interpreted as source and destination computers with one or more active and reserve resources) in the partitioned server 10. The iCOD (Capacity On Demand) scheme referenced in paragraph 0011 is disclosed to be implemented in the program code of the workload manager);

and a recordable computer-readable medium bearing the program code (paragraph 0012, lines 0010-0014, disclosing a machine readable medium with instructions for performing the disclosed invention).

However, Romero et al. do not specifically disclose that ***the source and destination computers are geographically dispersed from one another.***

In the same field of endeavor, Steele et al. disclose in their claimed program product that ***the source and destination computers are geographically dispersed from one another*** **(Fig. 3 that shows two distinct and geographically separated UDC (Utility Data Center) Control Planes 311 and 321, controlling the resource allocation for groups of networks VLAN-1:3 and VLAN A:C, each with its own spare resource pool 319 and 329 respectively; paragraph 0010, lines 8-12; paragraph 0023, lines 8-10; paragraph 0024, lines 2-4; paragraph 0025, Fig. 1, lines 8-9; and paragraphs 0027, 0032-0037 provide additional details; paragraph 0032 specifically disclosing that if a resource dedicated to VLAN-1 (313) fails, the control plane 311 will automatically configure a spare from the set of spares 319**

to replace the faulty resource, further disclosing (in paragraph 0032) that if none of the spares 319 are viable substitutions, one of the spares 329 can be used for control plane 311 rather than control plane 321; additionally disclosing (in paragraph 0034) a monitoring component being used to measure not only performance and integrity, but throughput as well, so that resource allocation may also be based on assisting in rebalancing loads throughout the data canter).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the case wherein the source and destination computers are geographically dispersed from one another, as taught by Steele et al. in the program product of Romero et al. in order to provide more versatile load balancing service wherein the computer resources are geographically dispersed.

Claims 5, 10, 13-15, 22, 26, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Romero et al. (U.S. Patent Application Publication # 2004/0199632 A1)** in view of **Steele et al. (U.S. Patent Application Publication # 2004/0117476 A1)** and further in view of **Zalewski et al. (U.S. Patent Publication # 6,260,068)**.

Consider **claim 5**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that transferring the availability further includes updating an entitlement database.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that is updated to reflect change in the ownership of a resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of updating an entitlement database as taught by Zalewski et al. in the method of Romero et al., as modified by Steele et al., in order to keep track of changes in the ownership of resources among various source and destination computers.

Consider **claim 10**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that limiting the availability further includes generating an activation code.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 62-64) the use of AVAILABLE bit in the HWRPB per-CPU flags field, interpreted to be functionally equivalent to generating an activation code, that is used by the system to indicate the status of a resource for transfer to another partition, while limiting the availability.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate generation of an activation code while relinquishing or acquiring standby resources as taught by Zalewski et al., in the method of Romero et al., as modified by Steele et al., so as to be able to activate the acquired

resource at the destination computer and deactivate the relinquished resource at the source computer or vice versa.

Consider **claim 13**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that transferring the availability further includes generating an activation code.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 62-64) the use of AVAILABLE bit in the HWRPB per-CPU flags field, interpreted to be functionally equivalent to generating an activation code, that is used by the system to indicate the status of a resource for transfer to another partition, while transferring the availability.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate generation of an activation code while relinquishing or acquiring standby resources as taught by Zalewski et al., in the method of Romero et al., as modified by Steele et al., so as to be able to activate the acquired resource at the destination computer and deactivate the relinquished computer at the source computer respectively.

Consider **claim 14**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that transferring the availability further includes storing data associated with the transferring.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure that holds the current ownership status of each transferable resource. The configuration tree structure is updated to store the change in the ownership of a transferable resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to preserve the latest status of ownership after transferring the availability by storing the relevant data as taught by Zalewski et al., in the method of Romero et al., as modified by Steele et al., in order to preserve the ownership before the transfer of the transferred resource, so that the resource can later be reclaimed by the original owner, as well as showing the current ownership of the transferred resource.

Consider **claim 15**, and **as applied to claim 1 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that transferring the availability further includes determining an availability status using an entitlement database.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that holds the current ownership status of each transferable resource. The configuration tree structure is reviewed while transferring the availability to ascertain the current ownership status of transferable resources.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of reviewing the current status

of ownership of any transferable resources among various source and destination computers as taught by Zalewski et al., in the method of Romero et al., as modified by Steele et al., in order to determine if the particular resource is critical to the operation of the current owner and therefore not to be relinquished or may be available for transfer if on standby status.

Consider **claim 22**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that the program code initiates updating an entitlement database.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that the program code updates to reflect change in the ownership of a resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of updating an entitlement database in the program code as taught by Zalewski et al., in the method of Romero et al., as modified by Steele et al., in order to keep track of changes in the ownership of resources among various source and destination computers.

Consider **claim 26**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that the program code initiates generating an activation code.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 62-64) the use of AVAILABLE bit in the HWRPB per-CPU flags field, interpreted to be functionally equivalent to generating an activation code that is used by the system to indicate the status of a resource for transfer to another partition.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate generation of an activation code while relinquishing or acquiring standby resources as taught by Zalewski et al., in the method of Romero et al., as modified by Steele et al., so as to be able to activate the acquired resource at the destination computer and deactivate the relinquished computer at the source computer respectively.

Consider **claim 29**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that the program code initiates storing data associated with the programmatic transfer.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure that holds the current ownership status of each transferable resource. The configuration tree structure is updated to store the change in the ownership of a transferable resource.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to preserve the status of ownership after transferring the availability by storing the relevant data as taught by Zalewski et al., in the apparatus of Romero et al., as modified by Steele et al., in order to preserve the ownership before

the transfer of the transferred resource, so that the resource can later be reclaimed by the original owner, as well as showing the current ownership of the transferred resource.

Consider **claim 30**, and **as applied to claim 16 above**, Romero et al., as modified by Steele et al., disclose the claimed invention, except that the program code initiates determining an availability status using an entitlement database.

In the same field of endeavor, Zalewski et al. disclose (Abstract; column 27, lines 60-62; column 31, lines 09-10) a configuration tree structure interpreted to be an entitlement database that holds the current ownership status of each transferable resource. The configuration tree structure is reviewed while transferring the availability to ascertain the current ownership status of transferable resources.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the step of reviewing the current status of ownership of any transferable resources among various source and destination computers as taught by Zalewski et al., in the apparatus of Romero et al., as modified by Steele et al., so as to make a determination as to which resources can be transferred when needed elsewhere.

Response to Arguments

Applicants' arguments with respect to **claims 1-35** have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any response to this Office Action should be **faxed to** (571) 273-8300 **or mailed to**:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Art Unit: 2143

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building

401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kishin G. Belani whose telephone number is (571) 270-1768. The Examiner can normally be reached on Monday-Thursday from 6:30 am to 5:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-0800.

Kishin G. Belani
K.G.B./kgb

December 27, 2007